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VIA DHL EXPRESS DELIVERY

ConnectME Authority
State House Station 1
Augusta, ME 04333

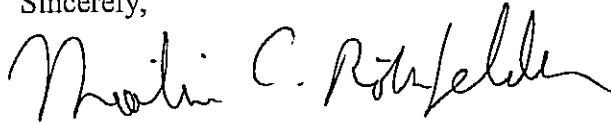
Re: **ConnectME Rulemaking –
Proposed Rule No. 2006-P239**

Dear Sir/Madam:

Enclosed please find the comments of Omnipoint Communications, Inc. d/b/a T-Mobile USA in regard to the above referenced matter. In addition to the original, one copy has been filed electronically. Further, please find one additional hard copy attached hereto to be date stamped and returned in the self-addressed, postage paid envelope.

Thank you for your cooperation in this matter.

Sincerely,



Martin C. Rothfelder

MCR/lh
Enclosure
cc: Michele Thomas

STATE OF MAINE
before the
CONNECTME AUTHORITY

ConnectME Authority Operation	:	Proposed Rule No. 2006-P239
Chapter 101 Rulemaking Proceeding	:	

COMMENTS OF T-MOBILE
ON
PROPOSED RULES REGARDING OPERATION OF CONNECTME AUTHORITY

Omnipoint Communications, Inc. d/b/a T-Mobile USA (“T-Mobile”) provides these comments regarding the proposed rules on the operation of the ConnectME Authority (the “Authority”) pursuant to the Notice of Rulemaking issued by the Authority dated September 27, 2006 under the authority of the Advanced Technology Infrastructure Act contained in 35-A M.R.S.A. §§ 9201-9215 and 36 M.R.S.A. §2017 (the “Act”).

SUMMARY

T-Mobile supports the Authority’s attempts to promulgate clear, organizational rules to achieve the goals of the Act but opposes the proposed requirement for CMRS carriers to develop and provide detailed statewide coverage maps and related data. T-Mobile instead recommends using existing public data and, if necessary, requiring applicants for funds to provide more detailed coverage and related data for Authority funding decisions. T-Mobile recommends using the definitions of “broadband service provider” and “mobile communications service provider” consistent with definitions and standards under federal law and relying on the federal reporting requirements for such entities for purposes of the

Authority's program. T-Mobile also requests more specificity in the rules with regard to the treatment and protection of confidential data provided to the Authority.

OVERVIEW OF T-MOBILE AND CMRS INDUSTRY

T-Mobile provides Commercial Mobile Radio Service ("CMRS")¹ in Maine and other states. T-Mobile is a "Communications Service Provider" as that term is defined under 35-A M.S.R.A. § 9202. Unlike landline carriers, CMRS carriers like T-Mobile began operations during the past two decades and grew without significant economic state or federal regulation. T-Mobile applauds the policies that have provided the competitive environment in which CMRS carriers have seen exponential growth at prices per minute that have decreased each year and have resulted in continuing improvements in quality of service.

The progress in the CMRS industry has been documented in, among various places, in the Federal Communications Commission's (FCC's) most recent annual report on competition in the CMRS industry (the "Eleventh Annual Report").² In that report, the FCC notes that the price per minute for CMRS has fallen from \$0.47 in December 1994 to \$0.07 in December 2005, a decline of 86 percent.³ The report also addresses rural areas, stating that there are a smaller number of mobile operators in rural areas as compared to urban areas, but finding that "this structural difference has not enabled carriers in rural areas to raise

¹ CMRS is defined at 47 USC § 332(d) and 47 CFR § 20.3. T-Mobile's services are licensed under the rules of the Federal Communications Commission.

² In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, ELEVENTH REPORT (released September 29, 2006). This report is available at: <http://CMRS.fcc.gov/cmrsreports.html>

³ *Id.*, ¶ 154.

prices above competitive levels or to alter other terms and conditions of service to the detriment of rural consumers.”⁴

T-Mobile is committed to further responding to the competitive environment it faces by expanding its infrastructure to serve and grow its subscriber base throughout the country. It has shown this commitment right here in the State of Maine. In addition to the substantial investment over the past several years that T-Mobile has made in deploying network facilities located in the State, T-Mobile recently opened a calling center in Oakland, Maine with staffing of over 600 employees. These investments by T-Mobile demonstrate its long-term commitment to providing quality service to its customers in Maine and contributing to the State’s economic well-being.

SPECIFIC CONCERNS

I. SECTION 3.B OF THE PROPOSED RULES SHOULD BE DELETED BECAUSE IT WOULD IMPOSE UNNECESSARY, COSTLY AND BURDENSOME REQUIREMENTS ON CMRS CARRIERS.

A. THE MAPPING REQUIREMENT IN SECTION 3.B SHOULD BE ELIMINATED.

T-Mobile is concerned with, and opposes, the requirement to file specified coverage maps and other data on services as would be required by section 3.B of the proposed rules. The regular development and provision of the maps that would be required by this proposal is costly and burdensome. Such carrier-specific data is highly confidential. Perhaps most important, the provision of the maps is unnecessary due the existence of other available coverage data.

More specifically, requiring each CMRS carrier to go through this process on a statewide basis is unnecessary as basic coverage information is available from a variety of

⁴ *Id.*, ¶ 88.

sources. The FCC already has developed basic data on CMRS coverage on a county-by-county basis for its Eleventh Annual Report referenced above. In the back of that report, there are color maps that, on a county-by-county basis, indicate how many carriers are in each county.⁵ There are separate maps showing CMRS coverage in general and then by technology.⁶ It is reasonable for the Authority to also contact the FCC to seek the data behind those maps. This already existing information from the FCC should provide the baseline coverage data that the Authority needs regarding CMRS coverage, technologies and service in Maine.

T-Mobile also provides non-confidential, timely information on coverage at its website at: <http://www.t-mobile.com/coverage/>, which one can use to view T-Mobile's coverage on a statewide basis or at a particular address in Maine. While T-Mobile was the first national carrier to provide such information on the Internet and remains the industry leader in this area, other carriers have recently started providing such information on the Internet.

T-Mobile submits that this publicly available information should provide the Authority with a baseline of information on CMRS coverage in Maine. Nevertheless, it is possible that this baseline of statewide data on coverage may not be specific or timely enough to make decisions regarding Authority awards of funding for additional facilities. If that is the case, then the Authority should require the applicants for funds to bear the burden of providing the additional CMRS coverage information in the relevant geographic area.

An applicant for funds could develop detailed coverage information in a specific geographic area through use of coverage monitors that carriers regularly deploy to determine

⁵ *Id.*, Map 1, p. 100.

⁶ *Id.*, Maps 1-8, pp. 100-107.

where coverage exists for both their own system and its competitors. Such a requirement would focus the mapping efforts areas on detailed information actually needed in the geographic area in which the Authority is considering expenditures of taxpayer funds. Furthermore, the information provided at that time for that geographic area would be up-to-date, rather than tied to annual maps that may be out of date at the time of a funding decision. In considering such an application the Authority can decide whether the area an applicant has requested funding for is an “unserved” or “underserved” area.

For these reasons, it is unnecessary to require CMRS carriers to develop costly, cumbersome, proprietary annual Maine-specific maps on coverage. Thus, the portion of Section 3.B of the proposed rules requiring coverage maps should not become part of the Authority’s rules.

B. THE REQUIREMENTS IN SECTION 3.B THAT CMRS CARRIERS PROVIDE DATA ON SERVICES AND CUSTOMERS SHOULD ALSO BE ELIMINATED

Section 3.B of the proposed rules also requires CMRS carriers to provide data on services and customers. While not as onerous as the mapping requirement, it is also unclear that this is necessary.

The FCC’s Eleventh Annual Report also provides a variety of data on CMRS services and customers – such as information on the number of CMRS customers in Maine – 823,242 at December 2005.⁷ A second FCC report provides updated information on subscribers on state-by-state basis every six months.⁸ T-Mobile suggests that the Authority consider utilizing such information for its baseline data rather than requiring the CMRS data filing requirements as proposed in Section 3.B.

⁷ *Id.*, Table 7, p.97.

⁸ Local Competition Report (June 2006). These reports are available at: <http://www.fcc.gov/wcb/iatd/comp.html>

As with the case for the coverage maps discussed above, the Authority should not begin requesting reports of data from carriers unless and until it has determined that the publicly available data such as these FCC reports is inadequate as baseline data. Thus, T-Mobile submits that the entirety of Section 3.B of the proposed rules should not become part of the final rules.

II. THE DEFINITIONS FOR BROADBAND AND MOBILE SERVICE PROVIDERS SHOULD BE CHANGED TO TRACK FEDERAL DEFINITIONS AND STANDARDS.

The proposed Authority rules, at Section 2, provide definitions of “mobile communications service provider” and “broadband service provider”. T-Mobile recommends that these definitions be made consistent with the federal definitions and standards for each and that the Authority adopt the federal reporting requirements applicable to each such provider, and no more.

First, with regard to the definition of “mobile communications service providers”, T-Mobile recommends that it be changed to be a provider of “commercial mobile service” as defined in United States Code, Title 47, Section 332(d). This federal definition encompasses facilities-based services licensed by the FCC as Cellular, Personal Communications Service and Specialized Mobile Radio services, and thus includes facilities-based providers of what is commonly considered wireless, mobile or cellular telephone service. Like many states, Maine’s statutes reference this federal definition in defining carriers. 25 M.S.R.A. § 2390.

T-Mobile also recommends that the definition of “broadband service provider” in the Authority’s rules be made consistent with the federal reporting standards by reference to and inclusion of those entities identified in 47 C.F.R. § 1.7001 that are required to file FCC Form 477 pursuant to that federal regulation. This is consistent with the Authority’s proposed rule,

at Section 3.A, which requires the filing of FCC Form 477 with the Authority and will ensure inclusion and consistency under a clearly defined set of standards for determining who is deemed a “broadband service provider” for purposes of the Act.

However, T-Mobile respectfully objects to the additional reporting requirements at Section 3.A.3 of the proposed rules. T-Mobile does not routinely track the data and information the Authority is proposing for reporting therein, which makes such reporting requirements extremely burdensome to meet. Moreover, T-Mobile cannot guarantee accuracy in the information provided. For example, T-Mobile cannot readily differentiate between “business” customers and “residential” customers, and thus cannot comply with rule as drafted. T-Mobile submits that the filing of FCC Form 477 will enable the Authority to undertake its program pursuant to the stated goals of Act and that the additional reporting requirements will not add materially to the Authority’s program, especially in light of the difficulty and burden in compliance placed on providers such as T-Mobile. For the foregoing reasons, T-Mobile requests that the Authority delete Section 3.A.3 from the final rule.

III. TREATMENT OF CONFIDENTIAL DATA MUST BE SPECIFICALLY ADDRESSED.

Section 4 of the proposed rule provides that certain types of data will automatically receive protection as confidential data, but does not indicate what procedures will be in place to provide protection. The proposed rule also allows for protective orders addressing other data. T-Mobile requests that the final rule provide specific procedures which address the storage, copying, review and eventual return or destruction of confidential material.

The rules should specify a custodian of records who has responsibility for and control of the storage, copying, review and eventual return or destruction of such material.

Provisions addressing protection to confidential data should at minimum, include that access

to the material would be limited to Authority Staff, members and consultants that have a need to review the data for the Authority to do its work. Copying of such records should be prohibited or, in the alternative, allowed only upon a showing of need and by written approval of the custodian of records. Destruction and/or return of the records (and any copies and notes from the records) should also be explicitly addressed in the final rule in a manner that provides for a certified destruction or return of the confidential material.

The rules must also not allow Authority members, employees and consultants that are employed by or consultants to either mobile telecommunications service providers or broadband service providers or the affiliates of either from seeing carrier-specific confidential data. Similarly, the rules must restrict or prohibit access by Authority members, employees and consultants that are employed by firms that are consultants to or major vendors to mobile telecommunications service providers or broadband service providers or affiliates of either.

The rules should recognize that such protection may require the involved Authority member, staff person or consultant to recuse himself or herself from, and not participate in, certain Authority matters. While this may seem harsh, it is absolutely necessary to protect the confidential data that the Authority anticipates receiving.

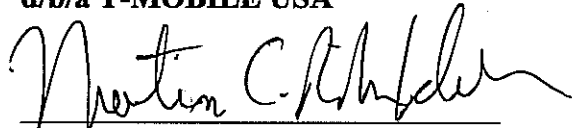
Minus such clear protections, CMRS carriers and presumably others will need to request protective orders prior to providing the data the rule claims the Authority will automatically protect. The requests will ask for provisions addressing these matters. Minus such clear protections, CMRS carriers and presumably others that properly manage their confidential material will be hesitant to provide sensitive confidential data.

CONCLUSION

Section 3.B of the proposed rules would impose costly, unnecessary burdens on CMRS carriers and should not become part of the final rules. Instead, the Authority should rely on information and data publicly available, supplemented if necessary, by information required from applicants for funds. The definitions of "broadband service provider" and "mobile communications service provider" should be amended to be clearly consistent with definitions in federal law, and the reporting requirements under the rules for broadband service providers should be limited to FCC Form 477 as filed with the FCC. Finally, the procedures for protection and non-disclosure of confidential data submitted by CMRS carriers and presumably others should be contained in these rules, while continuing to allow additional data and procedures to be addressed through specific protective orders.

Date: 10/31/06

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